

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK

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4 UNITED STATES OF AMERICA, : CR-06-776  
5 : (JFB)  
6 -against- : United States Courthouse  
7 THOMAS SALOY, : Central Islip, New York  
8 : May 2, 2008  
9 Defendant. : 10:45 a.m.  
10 -----X

11 TRANSCRIPT OF SENTENCING  
12 BEFORE THE HONORABLE JOSEPH F. BIANCO  
13 UNITED STATES DISTRICT COURT JUDGE  
14

15 APPEARANCES:

16 For the Government: ROSLYNN MAUSKOPF, ESQ.  
17 UNITED STATES ATTORNEY  
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21 For the Defendant: PETER RUBIN, ESQ.  
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31 Paul J. Lombardi, RMR, FCRR  
32 US District Court Reporter

1 THE CLERK: Calling case USA v Thomas Saloy.  
2 Counsel please state your appearance for the  
3 record.

4 MR. BODE: Alan Bode for the government.  
5 Good morning, your Honor.

6 MR. RUBIN: For the defendant, Peter Rubin,  
7 R-U-B-I-N.

8 THE COURT: Good morning, Mr. Rubin.  
9 As you know, we are here for sentencing. Are  
10 both sides ready to proceed?

11 MR. BODE: Yes, your Honor.

12 MR. RUBIN: Yes, your Honor.

13 THE COURT: Let me just go through what I have  
14 received to make sure I have gotten everything that has  
15 been submitted by the parties.

16 I have Mr. Rubin's sentencing memorandum. It's  
17 undated but it has an Exhibit A to it.

18 I have a November 20th letter sentencing  
19 submission from Mr. Rubin which attaches progress reports  
20 of the defendant's treatment, as well as numerous letters  
21 from the community, and obviously I have been receiving  
22 those progress reports periodically while the defendant  
23 has been on bail. So some of those reports were  
24 repetitive, ones I already received, but, nonetheless,  
25 they were attached to the letters of submission.

1 I also received an April 28th letter from  
2 Mr. Rubin which attaches the most recent update report  
3 from the halfway house dated April 18th, and I also  
4 received a few letters independently of Mr. Rubin's, ones  
5 that came in through the mail from people in support of  
6 Mr. Saloy.

7 Is there anything else that I should have from  
8 the parties in connection with sentencing?

9 MR. BODE: Not to my knowledge, your Honor.

10 MR. RUBIN: I believe that that's everything we  
11 have submitted, your Honor.

12 THE COURT: Is there any reason, Mr. Rubin, that  
13 other than the progress reports which, because of privacy  
14 reasons I don't think should be made public, is there any  
15 reason why I shouldn't file your sentencing submissions  
16 and the letters?

17 MR. RUBIN: No reason, your Honor.

18 THE COURT: I will do that, then.

19 Mr. Rubin, have you received a copy of the  
20 presentence report and the addenda, reviewed them, and  
21 discussed them with Mr. Saloy?

22 MR. RUBIN: I have, your Honor.

23 THE COURT: Mr. Saloy, have you received -- you  
24 can stay seated, Mr. Saloy.

25 Have you received a copy of the presentence

1 report and the addenda?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Have you had sufficient time to  
4 review it and discuss it with Mr. Rubin?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Mr. Rubin, does your client have any  
7 objections to the report?

8 MR. RUBIN: No, your Honor.

9 THE COURT: Does the government have any  
10 objections to the report?

11 MR. BODE: No, your Honor.

12 THE COURT: I adopt the information contained in  
13 the presentence report as factual findings by the court.

14 As you know, pursuant to **United States v Booker**,  
15 the sentencing guidelines are advisory. According to the  
16 calculation in the presentence report, the advisory  
17 guideline range is a level 22, criminal history category  
18 I, which is 41 to 51 months.

19 Do both sides agree that's an appropriate  
20 calculation of the advisory guideline range?

21 MR. BODE: Yes, your Honor.

22 MR. RUBIN: Yes, your Honor.

23 THE COURT: In terms of the advisory  
24 calculation, I agree with the probation department and the  
25 parties, that the advisory guideline range is 22,

1 consisting of the following, a base offense level 18 under  
2 Section 2G2.2A5, a two-level increase is warranted under  
3 Section 2G2.2B2 because the material included photographs  
4 of minors under the age of 12, a two-level increase is  
5 warranted under 2G2.2B6 because the defendant used a  
6 computer to possess child pornography.

7 There is a three-level increase under 2G2.2B7B  
8 because the offense involved the possession of 215 images  
9 of child pornography. That's an adjusted offense level of  
10 25.

11 I am awarding the defendant a three-level  
12 reduction for his acceptance of responsibility under 3E1.1  
13 which results in a total offense level of 22, criminal  
14 history category I, which is an advisory range of 41 to 51  
15 months.

16 Obviously the range is advisory. It's not  
17 mandatory. I must consider it in light of all the other  
18 factors that I need to consider under the law. Mr. Rubin  
19 has made written submissions arguing for a nonguideline  
20 sentence on a number of grounds.

21 I will now give him an opportunity to speak on  
22 those issues and any other issues that he'd like to raise  
23 in connection with sentencing based upon all of the  
24 3553(a) factors.

25 Go ahead, Mr. Rubin.

1 MR. RUBIN: Your Honor, please, under normal  
2 circumstances I would rely upon the submissions. I  
3 believe that they are relatively replete with the position  
4 of my office representing the defendant.

5 However, on behalf of Mr. Saloy, we are not  
6 asking this court for compassion. We are not asking for  
7 mercy, but we are asking for understanding. This  
8 individual has come a very long way in the year and a half  
9 that he's been in a custodial situation under the auspices  
10 of a therapist from St. Luke's Institute.

11 Unfortunately, Judge, for many years I have  
12 represented religious in similar circumstances. I can  
13 tell this court that this is the first time I have seen  
14 the type of progress that has been reported from the  
15 institute, especially the letter of April 18th of which  
16 your Honor has before him.

17 I do not think that St. Luke's would be happy  
18 with this characterization, but as far as I'm concerned,  
19 the defendant has somewhat become a poster child for the  
20 successful completion, or at least continuing in the  
21 program. This is the first time, as I told your Honor,  
22 that I have ever seen reports which have shown the ability  
23 of the institute to impart successful therapy and the  
24 recipient of the therapy not only accepting the therapy,  
25 but making progress.

1                   As we asked in our memorandum, and I will ask  
2     the court once again, the therapists seemed to indicate  
3     that he needs at least another year of therapy. Were he  
4     to be withdrawn from his therapeutic surrounding, I think  
5     that all of the work that has taken place for the last  
6     year and a half would probably be vitiated, and we might  
7     see a remission to behavior which is not acceptable.

8                   As such, I would ask your Honor to allow  
9     Mr. Saloy to continue with the halfway house. They are  
10    prepared to accept him back, were the court to be so  
11    inclined.

12                  Thank you, sir.

13                  THE COURT: Okay. Thank you, Mr. Rubin.

14                  Mr. Saloy, you also have the right to be heard  
15    in connection with sentencing. I obviously received your  
16    letter which I have reviewed, but you are entitled to  
17    speak on anything you would like to say in connection with  
18    sentencing.

19                  THE DEFENDANT: Just, your Honor, to begin with  
20    by thanking you and the court for allowing me the 17  
21    months to go to St. Luke's Institute to receive therapy.

22                  In the past year and a half that I have been  
23    there, I have been able to focus on two major events, or  
24    two major themes, and one is taking responsibility for the  
25    actions that have brought me here today.

1                   In looking at those actions and realizing how  
2                   wrong they were to in this public setting in the court to  
3                   apologize to the people of Long Island, to the people of  
4                   our society for the possession of child pornography that I  
5                   did possess, realizing how wrong that is and how evil that  
6                   is, to apologize to the court, to the church that I  
7                   represented and to my family.

8                   Secondly, in that time I have had the  
9                   opportunity to, in a very therapeutic and safe and  
10                  challenging environment to look at the events of the 47  
11                  years of my life, to realize that as a child, I  
12                  received -- I was at the hands of abuse, both sexual abuse  
13                  and verbal abuse, have looked at those situations and the  
14                  impact that they had on me. Now, looking at those actions  
15                  and how I could rewire my brain to make appropriate and  
16                  mature decisions in all aspects of my life.

17                  So, with that being said, to reiterate  
18                  Mr. Rubin, to ask me to allow me to continue that therapy  
19                  at St. Luke's Institute.

20                  THE COURT: Thank you, Mr. Saloy.

21                  Mr. Bode, does the government wish to be heard  
22                  in connection with sentencing?

23                  MR. BODE: Your Honor, pursuant to the plea  
24                  agreement, I make no recommendation. I leave the  
25                  sentencing to the court's discretion.



1           I would hand up to the court a proposed final  
2 order of forfeiture, which I have also given to defense  
3 counsel, and ask that that be made part of any judgment.

4           THE COURT: Mr. Rubin, you have no objection to  
5 that?

6           MR. RUBIN: None at all, your Honor.

7           THE COURT: I'm now going to describe the  
8 sentence I intend to impose. I'll give the parties one  
9 final opportunity to make any legal objection before the  
10 sentence is finally imposed.

11           In imposing sentence I have carefully  
12 considered, as I must, the factors set forth by Congress  
13 in Section 3553(a). These factors include the nature and  
14 circumstances of the offense and the history and  
15 characteristics of Mr. Saloy, the need for the sentence  
16 imposed to reflect the seriousness of the offense, to  
17 promote respect for the law, and to provide a just  
18 punishment for the offense, to afford adequate deterrence  
19 to criminal conduct, to protect the public from further  
20 crimes of the defendant and to provide the defendant with  
21 rehabilitation.

22           I have also considered the advisory sentencing  
23 guidelines issued by the sentencing commission and the  
24 applicable range in this case, as well as the applicable  
25 policy statements issued by the sentencing commission.

1 Another factor I must consider is the need to avoid  
2 unwarranted sentencing disparities amongst  
3 similarly-situated defendants. Restitution is not  
4 applicable in this case.

5 I have given this sentencing a lot of thought.  
6 I have spent a lot of time reviewing everything carefully  
7 that's been submitted. Those include a careful review of  
8 every one of the over 40 letters submitted on Mr. Saloy's  
9 behalf. It is clear from these letters to me that he has  
10 had an extraordinarily positive impact on the lives of  
11 many people that he served as a priest on Long Island.

12 The letters are filled with stories of how he's  
13 helped parishioners and members of the community in so  
14 many different ways, whether it be illnesses in hospital,  
15 the death of a loved one, substance abuse or caring for  
16 the poor.

17 There's a letter from a mother who tells about  
18 how Mr. Saloy drove to Boston to be with her during a  
19 liver transplant for her son. There's a letter from a  
20 mother who lost her son on 9/11 explaining how he was a  
21 great comfort to her and her family. There's a letter  
22 from a mother who describes as Mr. Saloy, quote, walked a  
23 long journey with me when my daughter was sick with cancer  
24 for many years.

25 There's another letter about how he helped

1 establish Krista House a home for the dying poor of  
2 Long Island, especially those with AIDS. The love and  
3 support that these people have for Mr. Saloy jumps off the  
4 pages of these letters and it is clear to me he has  
5 impacted the lives of many people in a very positive way  
6 over the years.

7           It makes it all the more tragic that he betrayed  
8 the trust of these parishioners in the community that he  
9 served by engaging in this criminal conduct. But in  
10 connection with sentencing, you can be assured that I have  
11 carefully considered and weighed all of these good works  
12 that he's performed for many years.

13           However, these good works are not the only  
14 factor that I must consider. I need to look at the  
15 seriousness of this offense. This is obviously an  
16 extremely serious offense.

17           It involved a total of 215 images of child  
18 pornography. Some of these images were extremely graphic.  
19 Based upon the summary in the probation report, they  
20 depicted victims which included those ranging from ages  
21 one to 14, the majority of the victims ranging from age  
22 six to 14. They include images including prepubescent  
23 children engaged in sexually explicit conduct with adults  
24 and with other prepubescent children. Some images were of  
25 known victims as or identified in the National Center For

1 Missing and Exploited Children.

2 In connection with this conduct, the defendant  
3 also engaged in sexual on-line chats with teenage boys.  
4 In addition, the possession took place over a period of  
5 one and one half years, which is a substantial period of  
6 time, and I cannot emphasize, enough, the seriousness of  
7 this criminal conduct.

8 I do recognize, as Mr. Rubin pointed out in his  
9 papers, that there's no evidence that the defendant ever  
10 physically abused any children in any way. There is no  
11 evidence that he ever attempted to solicit any children  
12 over the internet, or in any other way. However, that in  
13 no way minimizes the extremely serious nature of the crime  
14 here. If he had done those things, he would obviously be  
15 looking at even more time under the guidelines.

16 The possession of these images of child  
17 pornography, even apart from the absence of distribution  
18 by the defendant, has been deemed by Congress as a crime  
19 of violence for obvious reasons. The demand for child  
20 pornography created by individuals who seek and possess  
21 child pornography creates a market for their horrific  
22 exploitation of children, the existence of the internet  
23 and chat rooms in which these photographs are sought and  
24 exchanged has exponentially magnified the problem of  
25 distribution and of child pornography and the extreme

1 sexual and physical abuse of children that is inherent to  
2 that entire industry.

3 As Congress has noted, the existence of child  
4 pornography, quote, creates the potential for many types  
5 of harm in the community, and presents a clear and present  
6 danger to all children, end of quote. That's from the  
7 Child Pornography Prevention Act.

8 Therefore, because of the possession, even apart  
9 from the distribution of child pornography clearly  
10 facilitates the victimization of children in the  
11 community, punishment of those who possess child  
12 pornography needs to reflect the extremely serious nature  
13 of this crime.

14 I recognize that Mr. Saloy, and it is shown  
15 through the progress reports that I have reviewed, has  
16 made significant progress during his rehabilitation, and  
17 that's why I have let that rehabilitation go forward for a  
18 very long period of time, which is extraordinary for me to  
19 do. And I commend Mr. Saloy for the efforts that he has  
20 made, and for the progress that he has made, and I have  
21 taken that into consideration. I am hopeful that the  
22 treatment has reduced the likelihood that he will ever  
23 resort to this conduct again.

24 Obviously the true test will come when he's  
25 outside the confines of the setting of a hospital or jail

1 where he can again, among other things, have access to  
2 computers, but I am certainly encouraged by his progress  
3 in the treatment that he's made.

4 Even apart from the issues of specific  
5 deterrence of this defendant and whether he will resort to  
6 this again, I have considered the issue of general  
7 deterrence, in other words, apart from whether Mr. Saloy  
8 will commit this type of offense again, I have to consider  
9 that there are many other individuals out there right now  
10 who are either involved in child pornography now or may  
11 think about possessing child pornography in the future,  
12 and I need to fashion a sentence in this case that takes  
13 into account the need to send a message to those  
14 individuals and deter them from engaging in this type of  
15 violent criminal conduct.

16 Having considered all these factors, I find in  
17 the exercise of my discretion that a sentence within the  
18 advisory guideline range is appropriate in this case, and  
19 I intend to sentence Mr. Saloy to 41 months. That  
20 sentence is necessary to reflect, among other things, the  
21 seriousness of the offense, to promote respect for the  
22 law, and to provide a just punishment for the offense, and  
23 to afford adequate deterrence to criminal conduct.

24 I have considered all the arguments in  
25 mitigation, including his rehabilitation efforts while

1 under house arrest at the hospital, his lack of a criminal  
2 record, his genuine remorse as expressed at the plea,  
3 today, and in his letter and his acceptance of  
4 responsibility. I have considered his proffer with the  
5 government, and his many good works in the community.

6 But, in my discretion, I don't believe that any  
7 of these factors, individually, or in combination, are  
8 sufficient to warrant here a departure from the advisory  
9 guideline range, or a nonguideline sentence. However, I  
10 have considered these mitigating factors in not giving him  
11 a higher sentence which, absent these factors, I would  
12 otherwise have imposed in this case.

13 In sum, it's my conclusion that a sentence of 41  
14 months imprisonment adequately accounts for the various  
15 3553(a) factors as applied to this case, as I say,  
16 including the seriousness of the offense, the need for  
17 deterrence, to provide just punishment, rehabilitation and  
18 to promote proper respect for the law.

19 I would say with respect to rehabilitation, I'm  
20 obviously sensitive to the fact that Mr. Rubin is  
21 concerned that the incarceration will impact Mr. Saloy's  
22 rehabilitation efforts. I'm hopeful that those efforts  
23 will continue in the jail.

24 I gave him as much time as possible to complete  
25 as much of that rehabilitation as he could. But there

1 comes a point when the punishment needs to be imposed, but  
2 I am hopeful that he will continue the rehabilitation  
3 efforts in jail, and upon his release will again join the  
4 community and hopefully be a law-abiding and productive  
5 member of society.

6 In addition, I intend to impose three years of  
7 supervised release with the standard conditions and the  
8 following special conditions. I intend to impose a mental  
9 health treatment program. I intend to impose restrictions  
10 on his use of computers.

11 I intend to impose the restriction regarding  
12 notifying probation when he establishes a significant  
13 romantic relationship and informing the other party of his  
14 criminal history. I intend to impose the search  
15 condition, and that he not possess a firearm, ammunition  
16 or destructive device. I also intend to impose the  
17 mandatory \$100 special assessment.

18 I don't intend to impose of fine because of his  
19 inability to pay a fine. As I said, restitution is  
20 applicable and I intend to order forfeiture of the items  
21 that were listed in the plea agreement in a proposed final  
22 order of forfeiture.

23 MR. BODE: May I also ask, your Honor, probation  
24 generally asks for a period of supervised release, no  
25 unsupervised contact with minors.



1 I would ask that as well.

2 THE COURT: I will do that as well.

3 MR. RUBIN: I would ask, if I may, your Honor,  
4 prior to going into other areas, as far as the  
5 unsupervised contact with minors, he does have nephews and  
6 nieces as reported to Probation Officer Testa in the  
7 report, and the parents indicated in the report that they  
8 never had any problems with the defendant being with his  
9 nephews and nieces.

10 So that need not be any supervised situation.

11 THE COURT: Mr. Bode, is there any acceptance to  
12 be made for family members?

13 MR. BODE: It's a condition that we generally  
14 ask for.

15 I think maybe your Honor makes that a condition  
16 subject to the probation department. If probation speaks  
17 with the parents, and the parents don't have any issues  
18 with it, then I'd be hard-pressed to have issues with it  
19 as well.

20 However, unless we have them on the record  
21 saying that, I would like the probation department, while  
22 he's on supervised release, to make that determination.

23 THE COURT: Okay.

24 I will word it as no unsupervised contact with  
25 minors, unless there is approval by the parents and

1 probation, the probation department.

2 MR. BODE: That's fine, your Honor.

3 THE COURT: Okay.

4 Is there any legal reason I cannot impose that  
5 sentence, Mr. Bode?

6 MR. BODE: No, your Honor.

7 THE COURT: Mr. Rubin?

8 MR. RUBIN: If I may, your Honor.

9 I would respectfully at this time, and this is,  
10 once again, somewhat unusual, but these circumstances are  
11 also somewhat unusual in the fact that the defendant's  
12 activity only started, at least as we can tell, we being  
13 my office, the probation department, US Attorney, after a  
14 severe heart attack which nearly cost him his life. He  
15 has been in a custodial situation for 18 months. I don't  
16 know if this court could see fit to give him credit for  
17 that 18-month period.

18 Secondly, I would ask if the court doesn't see  
19 fir to doing that, prior to him surrendering to the US  
20 Bureau of Prisons, I would ask the court to allow him to  
21 return to the custodial situation to the halfway house in  
22 order to complete the program, which is at least another  
23 six months, if not another year.

24 I would be disappointed, given my history of  
25 dealing with religious, to see someone who has been, at

1 least up to this point, successful in a program to be put  
2 into a setting which might destroy a year and a half worth  
3 of therapy.

4 THE COURT: I have considered, Mr. Rubin, all  
5 the things that you have just mentioned.

6 First I have to say I was a little taken aback  
7 by the suggestion in the papers which you reiterated here  
8 that somehow the inappropriate behavior was triggered by  
9 the heart attack. I understand the evidence is that his  
10 behavior in this area started after the heart attack.

11 But I think it defies logic to me to suggest  
12 that a heart attack somehow caused someone to turn to  
13 child pornography. The issues here, as you know, and as I  
14 know from reading the presentence report, and as Mr. Saloy  
15 alluded to here today, are much deeper and much more  
16 complex than saying this was the result of a heart attack.  
17 So I'm hoping that the treatment, it seems to reflect the  
18 complexities of this issue in trying to rehabilitate the  
19 defendant.

20 In terms of giving him credit for the time in  
21 the hospital, I don't think that's appropriate in this  
22 case. I understand that he has had restrictions on his  
23 liberty, but he has been free to be on the hospital  
24 grounds, correct, during this period?

25 MR. RUBIN: He had to be within a certain

1 yardage of an analog phone because pretrial services in  
2 Maryland had him wearing an ankle bracelet.

3 So his liberty still was very much restricted.

4 THE COURT: I understand that. And I thought  
5 about that.

6 But it obviously is not jail, and I don't think  
7 it's appropriate for me to give some type of departure  
8 from the advisory range or a nonguideline sentence because  
9 of that fact. As I said, usually he would have been in  
10 jail all of this time in this type of case. It's a crime  
11 of violence.

12 Certainly at the time of the plea he would have  
13 gone in. Absent that, I wanted him to continue this  
14 rehabilitation. I don't think because that has been on  
15 for some period, that somehow I should subtract out that  
16 time. As I said, there are other things going into this,  
17 including deterrence. So I think it's necessary to have  
18 the sentence of 41 months.

19 In terms of the completion of the treatment,  
20 this has been a year and a half, Mr. Rubin.

21 MR. RUBIN: That's correct, your Honor.

22 THE COURT: At this point, my understanding is  
23 he's in a halfway house treatment.

24 MR. RUBIN: That's correct.

25 THE COURT: And halfway house treatment is

1 usually what you have -- what he would have after his term  
2 of incarceration. I let him complete, I think for about a  
3 year, the main treatment program, and allowed some  
4 additional time.

5 But I don't think any purpose will be served by  
6 prolonging this time that he has to serve, a year or a  
7 year and a half. As I said, it was extraordinary to allow  
8 this to go on for this long, and I just don't think it's  
9 appropriate to again adjourn letting him serve this  
10 sentence.

11 They do have treatment programs in the jail.  
12 Obviously I understand that's not his first choice or your  
13 first choice. But I'm hopeful that he has a sufficient  
14 foundation, based upon this year and a half that I let him  
15 rehabilitate, to withstand the stress obviously that will  
16 be associated with being in jail and not regress.

17 But I don't believe I can let this go on any  
18 further. He needs to start serving his sentence.

19 MR. RUBIN: I would further ask, your Honor, as  
20 Ms. Testa has reported to the court and the parties, his  
21 parents are elderly and severely ill. His father has had  
22 amputations, has diabetes. His mother has had a litany of  
23 surgeries.

24 And I would ask the court make a recommendation  
25 that he be allowed to serve whatever period of time the

1 Bureau of Prisons determines will be his maximum sentence  
2 at a facility where visitation would be possible. I would  
3 also request the court make a recommendation that based  
4 upon the history of my client as recited in the probation  
5 or presentencing report that the type of facility he be  
6 put in be a minimum security facility.

7 I'm terribly afraid were he to be put in a  
8 facility with inmates serving long sentences, that the  
9 fact that he is a petite individual might subject him to  
10 punishment way beyond what was contemplated by the  
11 statute.

12 THE COURT: Does the government have any  
13 objection to that?

14 MR. BODE: I think some sort -- if I read that  
15 as an application for some sort of protective custody, I  
16 think that might be -- is it based on his status or his  
17 build?

18 If it's based on his build --

19 THE COURT: I don't think he was asking for  
20 protective custody.

21 I thought you were asking to the extent  
22 consistent with BOP regulations he be designated to a  
23 minimum security facility.

24 MR. BODE: If it's consistent with the BOP, I  
25 have no problem with that recommendation.

1           I would note should the defendant elect to do  
2   so, it's purely voluntary, but in the last 24 to 36 months  
3   of his sentence, such as this, a defendant can elect to go  
4   into a treatment program. I believe currently it's at FMC  
5   Devons in Connecticut -- Massachusetts, actually. It's a  
6   daily program, and it's for persons with just this type of  
7   crime.

8           It would obviously be a location where he would  
9   likely be, I would think, more safe than in a general  
10   population setting given that it's persons in the same  
11   situation and they are obviously adept at dealing with  
12   that population specifically.

13           So if the defendant is interested in getting  
14   that treatment, I'd ask counsel, he might consider asking  
15   for that recommendation.

16           MR. RUBIN: Absolutely, your Honor.

17           THE COURT: I should make that recommendation  
18   then?

19           MR. BODE: Yes.

20           As long as counsel's on board with that, I think  
21   that's a good recommendation because if there are safety  
22   concerns, I think he's more safe in that location.

23           And, two, it's treatment which I think everyone  
24   here agrees is appropriate, and that Mr. Saloy desires.  
25   So I think that's a good track to keep him on.

1                   THE COURT: That's what you would like as well,  
2     Mr. Rubin?

3                   MR. RUBIN: Obviously I would like him not to be  
4     incarcerated.

5                   But given the alternative and the mind-set, that  
6     would be an ideal resolution, given the circumstances.

7                   THE COURT: In terms of visitation, my  
8     understanding is that all BOP facilities obviously allow  
9     family members to visit.

10                  To the extent his parents are elderly and sick  
11     and not able to travel, I will recommend, to the extent  
12     possible, he is designated to the -- they are in the New  
13     York City area?

14                  MR. RUBIN: That would then preclude him from  
15     being in this program.

16                  Since the maximum sentence your Honor is  
17     imposing is 41 months and the parameters for this program  
18     are for people serving two to three years, perhaps the  
19     Bureau of Prisons might see fit to immediately designate  
20     him to this facility, and we will worry about family  
21     visitation, which I think is far outweighed by the  
22     therapeutic requirements of my client.

23                  THE COURT: Okay.

24                  I'll put two recommendations. One, I will  
25     recommend, to the extent eligible, that the defendant be



1 designated to FCI Devons?

2 MR. BODE: FMC, I believe it is, Devons,  
3 D-E-V-O-N-S.

4 THE COURT: To participate in their treatment  
5 program?

6 MR. BODE: Yes.

7 THE COURT: And the second recommendation will  
8 be to recommend, to the extent that he is not eligible for  
9 FMC Devons, that he be designated to a minimum security  
10 facility, if consistent with BOP regulations.

11 MR. RUBIN: Thank you, your Honor.

12 PROBATION OFFICER: Your Honor, probation  
13 requests two clarifications of the special conditions of  
14 supervised release for both mental health treatment and  
15 the computer restrictions.

16 We request that it be put on record the  
17 conditions as set forth in the recommendation, just so  
18 there's no questions when he is on supervised release.

19 THE COURT: I will incorporate all the details  
20 of the restrictions that probation recommends in these  
21 situations, including with respect to the mental health  
22 treatment, I will include the cost provision as well.

23 My intention is to have the defendant remanded  
24 today. I will allow you, Mr. Rubin, to make an argument  
25 for a voluntary surrender, but that's my intention.

1                   MR. RUBIN: The argument for the voluntary  
2                   surrender, from our position, would ask the court only to  
3                   allow him to return to the halfway house until such time  
4                   as the actual surrender designation of the facility is  
5                   fixed by the Bureau of Prisons.

6                   He would still be in the same custodial  
7                   situation. I guess pretrial services would still be in  
8                   control of his --

9                   THE COURT: You understand I'm rejecting the  
10                  idea that he will stay out until he completes treatment,  
11                  but now you are asking a more limited request, which is  
12                  that he be allowed to stay out until a facility is  
13                  designated in the hope it will be one of these facilities.

14                  Is that what you are asking for now?

15                  MR. RUBIN: And to give my office the ability to  
16                  see what we could do to facilitate one of these facilities  
17                  accepting him.

18                  THE COURT: Does the government have any  
19                  objection to that?

20                  MR. BODE: I leave it to the court's discretion.

21                  THE COURT: I will allow for, because of the  
22                  issue regarding the desire to get him designated at either  
23                  a minimum security prison or the treatment facility at FMC  
24                  Devons, I think there are exceptional circumstances that  
25                  favor voluntary surrender to the designated facility.

1           In this situation, under the law, even if the  
2     defendant does not satisfy the criteria for release under  
3     Section 3143(a)(2), he may be released or be allowed out  
4     on continued release if I find that the conditions of  
5     release set forth in 3143(a)(1) have been met, and it is  
6     clearly shown that there are exceptional reasons why his  
7     detention would not be appropriate under Section 3145 C.  
8     This is set forth most recently by the Second Circuit in  
9     **United States v Lea**, L-E-A, 360 F.3d, 401 Second Circuit  
10    2004.

11           With respect to the criteria of 3143(a)(1), I  
12    find by clear and convincing evidence that under the  
13    restrictions that I have already imposed, including that  
14    he stay at the hospital, and not have any access to  
15    children or a computer, that he is not likely to flee or  
16    pose a danger to the safety of any other person or the  
17    community under those conditions for the brief period of  
18    time we are talking about here.

19           I also find that there are exceptional reasons  
20    here, as I have discussed, relating to a desire to avoid  
21    him getting housed in a maximum security facility, but to  
22    allow his lawyer to make efforts to have him designated to  
23    a facility or the facilities that we have discussed today.  
24    I also find that it's exceptional, obviously, that he has  
25    been out already for a period of a year and a half without

1 incident at the hospital, and that he has demonstrated  
2 progress as I have outlined.

3 I think all of these things create an  
4 exceptional circumstance that justifies continuing his  
5 release pending a designation. I will set a date for  
6 that.

7 Is 30 days sufficient to allow it to happen?

8 MR. BODE: I think the probation department  
9 indicates six weeks, your Honor.

10 THE COURT: Six weeks.

11 Okay.

12 MR. BODE: The marshal's service indicated the  
13 defendant needs to go down to the third floor today, your  
14 Honor, to fill out the paperwork regarding the  
15 self-surrender.

16 THE COURT: I will set the surrender date June  
17 16, 2008, to the facility designated by the  
18 Bureau of Prisons.

19 If a facility has not been designated by that  
20 time, Mr. Rubin, he should then report, you either have to  
21 ask for an extension of that date or you have to report to  
22 the marshals here, correct?

23 MR. BODE: Yes, your Honor.

24 THE COURT: Hopefully six weeks will give you  
25 sufficient time to look into this and give the

1 Bureau of Prisons sufficient time to designate a facility.

2 Okay?

3 MR. RUBIN: If not, I can call your deputy?

4 THE COURT: You should put in a letter, and I'll  
5 address it.

6 MR. BODE: I know this is the understanding, but  
7 I want to put it on the record, that Mr. Saloy is going  
8 to -- after signing the paperwork at the marshals, is  
9 going to be going back to the treatment facility under the  
10 same conditions, electronic monitoring, et cetera, and  
11 that he's going to be taken back under escort as he came  
12 to court.

13 Correct?

14 MR. RUBIN: Yes.

15 Magistrate Judge Orenstein initially dictated  
16 the rules of the release which I believe will continue.  
17 We have a retired FBI agent who is in the employ of the  
18 Diocese of Rockville Centre who has undertaken the  
19 responsibility of transporting the defendant to and from  
20 the facility.

21 I should advise the court that pretrial services  
22 there is closed for the weekend and expects the defendant  
23 to report, if he is allowed to return, which he is  
24 obviously going to do, on Monday, when they will replace  
25 the monitoring on him.

1           THE COURT: The other thing I have some  
2 concerns, although I'm hopeful that as a result of the  
3 treatment that he's undergoing that some of the issues I  
4 noted, the suicidal tendencies at the time of the arrest,  
5 and I want to make sure now that sentence is imposed the  
6 hospital is aware of the history and he gets regular help  
7 to meet that.

8           MR. RUBIN: They are well aware of the history.  
9 He is taking medication for depression, and  
10 hopefully that medication will address the issue.

11          THE COURT: Okay.

12          Obviously they should be specifically focused on  
13 that now that he's gone through the sentencing process.

14          MR. RUBIN: We will notify them.

15          THE COURT: Is there anything else before I  
16 impose this sentence?

17          MR. BODE: No, your Honor.

18          Thank you.

19          THE COURT: We have somebody in the audience.

20          MR. GIBBONS: Your Honor, if I may.

21          My name is Daniel Gibbons. I represent the  
22 Diocese of Rockville Centre. Is the order that the  
23 Diocese will have to pay for the escort that was just  
24 described by Mr. Rubin?

25          THE COURT: I didn't order that.

1 I thought -- how has he been going in the past?

2 I don't make any orders regarding that.

3 MR. RUBIN: The initial agreement, and this  
4 comes as somewhat of a surprise to me, obviously I do not  
5 represent the diocese, but I have a continuing dialogue  
6 with the diocese.

7 The diocese, through the director of priest  
8 personnel at the initial arraigning procedures in front of  
9 Magistrate Judge Orenstein, agreed to undertake  
10 transportation to and from whenever required by the court.

11 This is the first I'm hearing about the fact  
12 that the diocese does not want to pay for transportation.

13 MR. BODE: What I might recommend, to solve the  
14 issue, if both parties would agree, is that the defendant  
15 would agree to reimburse that cost, should the diocese  
16 ultimately not agree to the transportation cost.

17 THE COURT: I would never order the diocese to  
18 pay for that transportation. I don't think that would be  
19 appropriate.

20 If there has been some type of voluntary  
21 arrangement where they have been doing that and they will  
22 continue to do that, then obviously that's up to them.

23 But if they do not agree, then the defendant  
24 will need to bear the cost of that. Okay, Mr. Rubin?

25 MR. RUBIN: Yes.

1 MR. GIBBONS: Thank you, your Honor.

2 THE COURT: Is there anything else before I  
3 impose this sentence?

4 MR. BODE: No, your Honor.

5 Thank you.

6 THE COURT: Mr. Rubin, anything else?

7 MR. RUBIN: Once again, I would ask your Honor  
8 for the period of time from today going forth, until he  
9 surrenders himself six weeks hence, that he be given  
10 credit for the six-week period, whatever time that be.

11 THE COURT: That request is denied.

12 As I said, I'm extending this period of time as  
13 I did the time prior to sentencing, as an opportunity for  
14 him. But it should not be a substitute for jail.

15 There are other people that have not been given  
16 that opportunity and for him to receive credit for that,  
17 under these circumstances, I don't think is appropriate.  
18 The time needs to reflect jail time, and not time spent at  
19 a hospital.

20 I understand all these things are in my  
21 discretion, and they are certainly things I can weigh  
22 under 3553(a). But it's my decision, in my discretion,  
23 it's not warranted under all the facts of this case.

24 Mr. Bode, do I also need to enter the forfeiture  
25 in the standard judgment that's also a portion for --



1 MR. BODE: Yes.

2 THE COURT: Should I attach this to the judgment  
3 and say see attached?

4 MR. BODE: If your Honor executes that and  
5 attaches it to the judgment, that's exactly what the civil  
6 division requests.

7 THE COURT: Okay.

8 Mr. Saloy, please rise.

9 After considering the 3553 factors, it is the  
10 judgment of this court that you be sentenced to the  
11 custody of the Attorney General through the  
12 Bureau of Prisons for a term of imprisonment of 41 months.  
13 That term of imprisonment -- I impose a three-year period  
14 of supervised release to follow that term of imprisonment,  
15 with the standard conditions and the following special  
16 conditions.

17 One, you shall participant in a mental health  
18 treatment program which may include participation in a  
19 treatment program for sexual disorders as approved by the  
20 probation department. You shall contribute to the cost of  
21 such services rendered and/or any psychotropic medications  
22 prescribed to the degree you are reasonably able, and you  
23 shall cooperate in securing any applicable third-party  
24 payment.

25 You shall disclose all financial information and

1 documents to the probation department to assess your  
2 ability to pay. As part of the treatment program for  
3 sexual disorders, you shall participate in a polygraph  
4 examination to obtain information necessary for risk  
5 management and correctional treatment.

6 Two, you are not to use a computer, internet  
7 capable device or similar electronic device to access  
8 pornography of any kind. This includes, but is not  
9 limited to, accessing pornographic Web sites, Web sites  
10 depicting images of nude adults or minors. You shall not  
11 use your computer to view pornography stored on a related  
12 computer media, such as CDs or DVDs, and shall not  
13 communicate via your computer with any individual or group  
14 who promotes the sexual abuse of children.

15 You shall cooperate with the probation  
16 department's computer and internet monitoring program.  
17 Cooperation includes but is not limited to identifying  
18 computer systems, internet capable devices and/or similar  
19 electronic devices you have access to and allowing  
20 installation of monitoring software/hardware devices at  
21 your expense.

22 You shall inform the parties that access a  
23 monitored computer or similar electronic device that the  
24 device is subject to search and monitoring. You are  
25 limited to possessing only one personal internet capable

1 device to facilitate the probation department's object to  
2 monitor your internet-related activities. You shall  
3 permit random examinations of your computer and internet  
4 capable devices, similar electronic devices and related  
5 computer media such as CDs under your control.

6 Three. You shall have no unsupervised contact  
7 with minors, unless there is approval by the parents and  
8 the probation department.

9 Four. You shall notify the probation department  
10 when you establish a significant romantic relationship and  
11 shall inform the other party of your prior criminal  
12 history concerning your sex offenses. You must notify the  
13 probation department of that significant other's address,  
14 age, and where the individual may be contacted.

15 Five. You shall submit your person, residence,  
16 place of business, vehicle or any other premises under  
17 your control to a search on the basis that the probation  
18 officer has reasonable belief that contraband or evidence  
19 of a violation of the conditions of release may be found.  
20 The search must be conducted in a reasonable manner and at  
21 a reasonable time. Failure to submit to search may be  
22 grounds for revocation, and the defendant shall inform any  
23 other resident that the premises may be subject to search  
24 pursuant to this condition.

25 Six. You shall not possess a firearm,

1     ammunition or destructive device. I do not impose a fine  
2     because of your inability to pay a fine and will not be  
3     able to pay a fine in the future.

4             I impose the mandatory special assessment of  
5     \$100.

6             I order that you forfeit the following  
7     properties that were seized on or about November 9, 2006,  
8     one eMachine processing unit, Model T2824, serial number  
9     QAZ4500200447, one eMachine computer processing unit,  
10    Model T3882, serial number GDF5310008071, and 90 floppy  
11    computer disks and one compact disk.

12            I recommend the following to the  
13    Bureau of Prisons;

14            One, I recommend, to the extent eligible, that  
15    the defendant be designated to FMC Devons to participate  
16    in their treatment program, and, two, I recommend, to the  
17    extent that he's not eligible for FMC Devons, that he be  
18    designated to a minimum security facility, if consistent  
19    with BOP regulations.

20            As I said before, the defendant will be released  
21    and allowed to voluntarily surrender on June 16, 2008, by  
22    2 p.m. to the designated facility. All the bail  
23    conditions that applied pending sentencing apply until his  
24    date of surrender.

25            Mr. Saloy, to the extent that you have not

1 waived your right to appeal by virtue of your plea  
2 agreement with the government, you have the right to  
3 appeal your sentence. If you are unable to pay the cost  
4 of appeal, you may apply for leave to appeal  
5 in forma pauperis. If you cannot afford an attorney, one  
6 will be appointed for you.

7 Notice of appeal must be filed within ten days  
8 of the judgment of conviction which will probably be  
9 issued on Monday.

10 Is there anything else for today?

11 MR. BODE: No, your Honor.

12 THE COURT: Anything from the defense?

13 MR. RUBIN: No, your Honor.

14 THE COURT: Thank you.

15 (The matter concluded.)

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